

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
DETROIT DIVISION**

CASE NO.: 2:23-cv-12852

ABG IMAGES (UK) LTD TRADING AS
ICONIC IMAGES LIMITED and DOUGLAS
MORLEY KIRKLAND,

Plaintiffs,

v.

VELVET BULLDOG, LLC dba ROBERT
KIDD GALLERY and GERARD MARTI,

Defendants.

COMPLAINT FOR COPYRIGHT INFRINGEMENT
(INJUNCTIVE RELIEF DEMANDED)

Plaintiffs ABG IMAGES (UK) LTD TRADING AS ICONIC IMAGES LIMITED AND DOUGLAS MORLEY KIRKLAND by and through their undersigned counsel, bring this Complaint against Defendants VELVET BULLDOG, LLC DBA ROBERT KIDD GALLERY AND GERARD MARTI for damages and injunctive relief, and in support thereof state as follows:

SUMMARY OF THE ACTION

1. Plaintiffs ABG IMAGES (UK) LTD TRADING AS ICONIC IMAGES LIMITED ("Iconic") and DOUGLAS MORLEY KIRKLAND ("Kirkland") (collectively "Plaintiffs") bring this action for violations of exclusive rights under the Copyright Act, 17 U.S.C. § 106, to copy and distribute Plaintiffs' original copyrighted Works of authorship.

2. Iconic Images represents a variety of photographers, creatively releasing the value of their archives via Fine Art Prints, Exhibitions, Editorial and Commercial Licenseing,

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Merchandising and Book Publications. The archive includes one of the world's largest collections of David Bowie and Elton John, a late shoot of Marilyn Monroe in bed, mesmerizing shots of Jimi Hendrix and his guitar in flames and some of the most iconic subjects from the '60s and '70s, ranging from Raquel Welch to Audrey Hepburn, Roger Moore to Frank Sinatra, The Rolling Stones to The Beatles, Iggy Pop to Led Zeppelin and many more.

3. Douglas Kirkland joined Look Magazine in his early twenties, and later Life Magazine during the golden age of 60's/70's photojournalism. His assignments included essays on Greece, Lebanon, and Japan, as well as fashion and celebrity work, photographing Marilyn Monroe, Elizabeth Taylor, Marlene Dietrich and many others. Kirkland's fine art photography has been exhibited all over the world. His exhibition of Freeze Frame is now in the permanent collection of Academy of Motion Picture Arts and Sciences in Beverly Hills. His work is also in the permanent collections of the Smithsonian, the National Portrait Gallery in Canberra Australia, the National Portrait Gallery in London, the Eastman House in Rochester, the Houston Center for Photography, and the Annenberg Space for Photography in Los Angeles.

4. Defendant VELVET BULLDOG, LLC DBA ROBERT KIDD GALLERY (“RKG”) is an art gallery located in Birmingham, Michigan. RKG offers online viewing of artists’ work on their Website, which also hosts a shop where consumers can purchase certain pieces at a set cost, as well as a “Make an Offer” page where you can make an offer on any piece of art on the Website. At all times relevant herein, RKG owned and operated the internet website located at the URL <http://robertkiddgallery.com/> (the “Website”).

5. Defendant Gerard Marti (“Marti”) is an artist and the owner of RKG.

6. Defendants RKG and Marti are collectively referred to herein as “Defendants.”

7. Plaintiffs allege that Defendants copied Plaintiffs' copyrighted Works from the internet in order to advertise, market and promote their business activities. Defendants committed the violations alleged in connection with Defendants' business for purposes of advertising and promoting sales to the public in the course and scope of the Defendants' business.

JURISDICTION AND VENUE

8. This is an action arising under the Copyright Act, 17 U.S.C. § 501.

9. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331, 1338(a).

10. Defendants are subject to personal jurisdiction in Michigan.

11. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) and 1400(a) because the events giving rise to the claims occurred in this district, Defendants engaged in infringement in this district, Defendants reside in this district, and Defendants are subject to personal jurisdiction in this district.

DEFENDANTS

12. Velvet Bulldog, LLC dba Robert Kidd Gallery is a Michigan Limited Liability Company, with its principal place of business at 107 Townsend Street, Birmingham, MI 48009, and can be served by serving its Registered Agent, Gerard Marti, 107 Townsend Street, Birmingham, MI 48009.

13. Gerard Marti is an individual residing in Oakland county, state of Michigan and can be served at 107 Townsend Street, Birmingham, MI 48009 107 Townsend Street, Birmingham, MI 48009.

THE COPYRIGHTED WORKS AT ISSUE

14 Terry O'Neill ("O'Neill") created the "Smoking Bardot" photograph, and Kirkland created the "Monroe" and "Bardot" photographs, which are shown below and referred to herein as the "Works".

Smoking Bardot Photograph



Monroe Photograph



Bardot Photograph



15. O'Neill registered the Smoking Bardot photograph with the Register of Copyrights on January 9, 1986 and was issued the copyright registration number VA 213-335.

16. Kirkland registered the Monroe photograph with the Register of Copyrights on October 31, 1989 and was issued the copyright registration number VA 399-173.

17. Kirkland registered the Bardot photograph with the Register of Copyrights on July 22, 2019 and was issued the copyright registration number VA 2-177-776. The Certificates of Registration are attached hereto as Exhibit 1.

18. Iconic is the owner of O'Neill's Work by agreement dated April 11, 2013.

19. At all relevant times Plaintiffs was the owner of the copyrighted Works at issue in this case.

INFRINGEMENT BY DEFENDANTS

20. Defendants have never been licensed to use the Works at issue in this action for any purpose.

21. On a date after the Works at issue in this action were created, but prior to the filing of this action, Defendants copied the Works.

22. On or about February 28, 2022, Plaintiffs discovered the unauthorized use of their Works on the Website. The Works were used on the Website multiple times, and were posted as part of the "Diamond Dust Collection"

23. Defendants copied Plaintiffs' copyrighted Works without Plaintiffs' permission.

24. After Defendants copied the Works, they made further copies and distributed the Works on the internet to promote the sale of goods and services as part of their regular business activities.

~~25.~~ Defendants copied and distributed Plaintiffs' copyrighted Works in connection with Defendants' business for purposes of advertising and promoting Defendants' business, and in the course and scope of advertising and selling products and services.

~~26.~~ Plaintiffs' Works are protected by copyright but are not otherwise confidential, proprietary, or trade secrets.

~~27.~~ Defendants committed copyright infringement of the Works as evidenced by the documents attached hereto as Exhibit 2.

~~28.~~ Plaintiffs never gave Defendants permission or authority to copy, distribute or display the Works at issue in this case.

~~29.~~ Plaintiffs notified Defendants of the allegations set forth herein on March 17, 2022 and . To date, the parties have failed to resolve this matter.

COUNT I COPYRIGHT INFRINGEMENT

~~30.~~ Plaintiffs incorporate the allegations of paragraphs 1 through 29 of this Complaint as if fully set forth herein.

~~31.~~ Plaintiffs own valid copyrights in the Works at issue in this case.

~~32.~~ Plaintiffs registered the Works at issue in this case with the Register of Copyrights pursuant to 17 U.S.C. § 411(a).

~~33.~~ Defendants copied, displayed, and distributed the Works at issue in this case and made derivatives of the Works without Plaintiffs's authorization in violation of 17 U.S.C. § 501.

~~34.~~ Defendants performed the acts alleged in the course and scope of its business activities.

~~35.~~ Defendants' acts were willful.

~~36.~~ Plaintiffs has been damaged.

~~37.~~ The harm caused to Plaintiffs have been irreparable.

COUNT II
VICARIOUS COPYRIGHT INFRINGEMENT BY MARTI

~~38.~~ Plaintiffs incorporate the allegations of paragraphs 1 through 29 of this Complaint as if fully set forth herein.

~~39.~~ Plaintiffs own valid copyrights in the Works at issue in this case.

~~40.~~ Plaintiffs registered the Works at issue in this case with the Register of Copyrights pursuant to 17 U.S.C. § 411(a).

~~41.~~ Marti copied, displayed and distributed the Works at issue in this case and made derivative of the Works without Plaintiffs' authorization in violation of 17 U.S.C. § 501.

~~42.~~ Marti had the right and ability to supervise the infringing activities of Marti and RKG alleged herein.

~~43.~~ Marti had a direct financial interest in the infringing activities alleged herein.

~~44.~~ As a result of Marti's vicarious infringement as alleged above, RKG obtained direct and indirect profits it would otherwise not have realized but for its infringement of the Works.

~~45.~~ Plaintiffs have been damaged.

~~46.~~ The harm caused to Plaintiffs have been irreparable.

WHEREFORE, the Plaintiffs ABG Images (UK) Ltd trading as Iconic Images Limited and Douglas Morley Kirkland pray for judgment against the Defendants Velvet Bulldog, LLC dba Robert Kidd Gallery and Gerard Marti that:

a. Defendants and their officers, agents, servants, employees, affiliated entities, and all of those in active concert with them, be preliminarily and permanently enjoined from committing the acts alleged herein in violation of 17 U.S.C. § 501;

b. Defendants be required to pay Plaintiffs their actual damages and Defendants' profits attributable to the infringement, or, at Plaintiffs' election, statutory damages, as provided in 17 U.S.C. § 504;

c. Plaintiffs be awarded their attorneys' fees and costs of suit under the applicable statutes sued upon;

d. Plaintiffs be awarded pre- and post-judgment interest; and

e. Plaintiffs be awarded such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury of all issues so triable.

DATED: November 9, 2023

Respectfully submitted,

/s/Joseph A. Dunne

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